United States Court of Appeals

for the Second Circuit

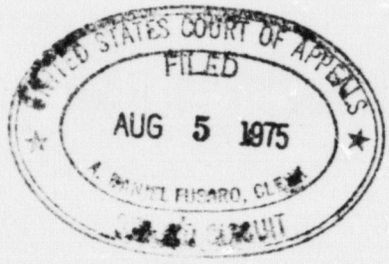
PETITION FOR REHEARING EN BANC

75-7004

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NO. 75-7004



ARCHIE PELTZMAN,

PLAINTIFF-APPELLANT

v.

CENTRAL GULF LINES, INC;

DEFENDANT-APELLEE.

PETITION FOR REHEARING IN BANC

OF PLAINTIFF-APPELLANT

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UNITED STATES COUR. OF APPEALS

FOR THE SECOND CIRCUIT

ARCHIE PELTZMAN,
PLAINTIFF-APPELLANT,

v.

CENTRAL GULF LINES, INC.
DEFENDANT-APPELLE.

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

APPELLANT'S PETITION FOR REHEARING IN BANC

INTRODUCTION

Now comes Archie Peltzman, plaintiff-appellant, & respectfully petitions for rehearing in banc of the Court's decision of July 24, 1975, which affirmed the District Courts ruling granting summary judgment dismissing the complaint of a marine radio operator for damages for wrongfuldischarge.

This petition is based on the following points:

1. The Court applied the wrong rule of law (State not Federal General Maritime Law) in deciding this case. Uniformity requires application of General Maritime Law.

2. A union security clause in a bargaining agreement based on a illegal exclusive preferential hiring hall agreement(in interstate commerce), is invalid in thirty states which allow union security clauses. See N.L.R.B. v Pacific Maritime Assn, 172 N.L.R.B. No. 234, 1958 & Puerto Rico S.S. Assn., v N.L.R.B. 281 F2d 615, 1960. - Held-Preferential Hiring illegal.

See appellant's arguments in his briefs & in the record as to the closed shop conditions in the maritime & building trades. (AB* 24-41) & Congressional hearings on A BILL TO LEGALIZE MARITIME HALL (not passed) (reply brief of appellant 2)

3. A union security clause in a bargaining agreement is illegal in twenty states which have a public policy of refusing to enforce such agreements requiring membership in a union as a condition of employment. See U.S. Supreme Court in Retail Clerks International Assn., Local 1625,et al Petitioners, V Alberta Schermerhorn et al respondents NO. 368,375 US 746, 1968.

4. The Court's allegation that District Courts decision after a hearing, that defendant was entitled upon the undisputed facts to dismissal of the complaint as a matter of law is erroneous. *(SL. OP. 5069)

(a) Contrary to the Districts Courts decision as to requirement of membership or payment of dues & initiation fees from seamen, Appellant has argued that Tit. 46 Sec 599a forbids payment to anyone for providing employment to seaman.

*Appellants' appendix 24-41 - certified docket No. 21791 & No. 24737 & decree stipulated in American Radio Assn. , cases in N.L.R.B.
*Slip opinion 5069

Any payments appellant made to union were voluntary up to the time when the union demanded the initiation fee.The check-off of appellants dues from his vacation check was illegal,& appellant signed this check-off only because he knew that the union would punish him in the application of the shipping list preference if he did not sign.*(A 40 in first appeal.)

(b) CContrary to District Courts decision that unions rules as to automatic suspension,& automatic expulsion were valid,& that the permit card system for entry or re-entry into the union were uniformly applied,appellant has argued in his pleadings that the rules were ultra vires,& that the Bill Of Rights in L.M.R.D.A. prohibited such practices.(see Point III in (AB23) STATUTORY LAW CONTROLS THIS CASE,& THE BARGAINING AGREEMENT SUPPLEMENTS THOSE BENEFITS.

(c) Contrary to Courts opinion (SL.OP.5069) that appellant offered no evidence of his inactive status,see his inactive assignment (A36) in first Appeal,& Ex 1 produced at hearing Oct. 15,1974,(Supplemental Record).

ARGUEMENT

1.The Court applied the wrong rule of Law (State,not Federal) in deciding this case.Uniformity requires application of General Maritime Law.

(a) The District Court,& the Appellate disregarded & ignored appelants arguements that a long line of decisions in the Maritime field proved conclusively that Maritime cases must be uniform,& state laws which allow discharge of seamen on the

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* Appendix 40

basis of a union security clause will not be enforced.(See point 1V AB 29-31),CONFLICT BETWEEN FEDERAL,STATE,OR LABOR LAW,VIS A VIS MARITIME LAW,CONCERNING SEAMENS EMPLOYMENT, MUST BE RESOLVED BY MARITIME LAW.

(b) Uniformity demands that a seaman who resides in one of twenty states that protect his constitutional rights to earn a living in his chosen profession,be given the same protection when he resides in one of thirty states that allow union security clauses in a bargaining agreement that requires membership,& adhesion to union rules & regulations,or suffer discharge from his job.

(c) Unless this principle is applied,then on the same ship which employs seamen from many states,only those seamen who reside in states that allow discharge from employment for non-membership in a union can lose their jobs,but seamen living in Right To Work States which protect his rights to earn his living cannot be discharged because of the protection afforded him to right his wrongful discharge in the Courts Of Those States.

(d) The Constitution of the United States protects everyone under its protection with certain fundamental rights as espoused in the Declaration Of Independence,& no private conveant,whether it is called a bargaining agreement,or contract, or union security clause can take away any fundamental right of anyone under the protection of the United States Constitution. See Shelly v Kraemer 334 U.S. 1948,holding conveant is a private agreement held not enforceable in law as restricting liberty of individual .

See the latest Maritime case Mobil Oil Co. v Chemical & Atomic Workers,U.S. Law Week 12-3-74,discussed in (AB 14,22,25) to the effect that seamen living in Texas,those not living in Texas, were not obliged to pay maintenance of membership fees pursuant to a union security clause because of State Laws in Texas protecting their jobs,superseded any private "contract rights". While the decision was based on both State & Maritime Law,the priniciple was that State laws can implement Maritime Law but cannot denigrate or supersede Maritime Law.See (AB 30) J Reed's dissenting opinion in Wilburn Boat Co.,v Firemans Ins. Co.p 327, "One rule of law stands unquestioned.That is that all Courts, State or Federal which have jurisdiction to enforce Maritime or Admiralty substantive rights must do so according to Federal Admiralty Law"(citing the authorities) including 64 Harv L Rev 246;Stevens-Erie R R v Tompkins,& the uniform general Maritime Law.

(e) The United States Supreme Court in a long line of decisions reiterated in U.S.Bulk Carriers v Arquelles 400 U.S. 358,1971,has held that the Statutory sections of the General Maritime Law control a seamans employment,& conditions of employment.See Blanco v Phoanix Companies De Navegacion SA, CA4Va,304 F2 13,which collects the cases to the effect that seamen in modern times still get protective care particularly with regard to their employment.Holding that a seaman who had a liability limit in his employment contract of $ 1,800.00 re any injury was not bound by same.

See also J Brandeis dissenting in Adams v Tanner 244 U.S. 616. 1916,to the effect,citing Patterson v Bark Eudora that payment by seamen to anyone for providing them with employment is forbidden by statute.(Reply Brief 2).

(f) The Appelate's Court statement in the second appeal (SL.OP.5070).that the union did not discriminate against him is pleaded in his (Point V),UNION BREACHED ITS DUTY OF FAIR REPRESENTATION BY ARBITRARY,DISCRIMINATORY,& BAD FAITH CONDUCT TOWARDS FORMER UNION MEMBER.(AB 31-35).HOWEVER APPELLANT QUOTES THE union official Smith*(tr 221)that only one other member in the union who returned to the industry after the Coast Guard reissued his license,was admitted to the union by paying an initiation fee of $ 1,000.00 dollars instead of the $ 2,000.00 demanded of appellant,after Homer's attorneys threatened a law suit to vindicate his rights.(Supplemental Record).The nine other former members who returned & paid initiation fees ,listed in Defendant's Brief page 8 all left voluntarily,so that they were not in the same class as Homer & appellant who were forced to leave the industry involuntarily.Only the treatment accorded to both Homer & appelant is relevant in this case.Homer compromised his rights,the appellant did not.

Conclusion

The present case presents an exact parallel with the facts that faced the Supreme Court in the Radio Officers Union v N.L.R.B. 347 U.S.17,1954.The decision there is fully applicable in this case

* TRANSCRIPT OF SUMMARY JUDGMENT HEARING

CERTIFICATE OF SERVICE.

The undersigned Archie Peltzman affirms that he mailed a copy of the petition for a rehearing in the case of Peltzman v Centr[illegible]lf Lines 75-7004,on August 5,1975 to the defendant's attorneys Lorenz,Finn,Giardino,& Lambos, at thier address 25 Broadway ,Newyork 10004.

Archie Peltzman
Appellant,Pro Se.

For the foregoing reasons the appellant requests an opportunity for a rehearing on these points.Because of the fundamental nature of the questions presented,it is requested that the rehearing be before the entire Court,sitting in banc.

Respectfully submitted
Archie Peltzman

Appellant ,Pro Se.